

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HEATHER PAINTER,

Plaintiff,

vs.

AARON ATWOOD, D.D.S, et al.

Defendants.

2:12-cv-01215-JCM-RJJ

ORDER

This matter came before the Court on Defendants/Counterclaimants/Third-Party Plaintiff's Motion to Stay Discovery Pending a Ruling on Plaintiff's Motion to Dismiss and to Extend Discovery Deadlines or in the Alternative Motion for Clarification (#27).

PROCEDURAL HISTORY

The Plaintiff filed the Complaint in this matter on July 10, 2012. Docket No. 1. On August 10, 2012, the Defendants filed a Motion to Dismiss. Docket No. 5. The Court denied the Defendants Motion to Dismiss on December 12, 2012. Docket No. 12. On January 23, 2013, the Defendant's filed their Answer which included a third-party complaint and counterclaim. Docket No. 14. On February 11, 2013, the Plaintiff filed a Motion to Dismiss the Third Party Complaint and Counterclaims. Docket No. 16. That same day, the parties filed a Proposed Discovery Plan and Scheduling Order. Docket No. 15. The Court denied that Proposed Discovery Plan and Scheduling Order for failing to comply with the Local Rules. Docket No. 17. Subsequently, the parties filed another Proposed Discovery Plan and Scheduling Order requesting that discovery not begin until the Court decides the Plaintiff's Motion to Dismiss or, in the alternative, that

1 discovery end October 28, 2013. Docket No. 18. The Court denied that Proposed Discovery Plan
 2 as well because it did not provide adequate grounds for staying discovery pending a decision on
 3 the Motion to Dismiss nor for allowing an October 28, 2013, discovery cut-off date. Docket No.
 4 19.

5 The motion presently before the Court is again seeking to stay discovery pending the
 6 Court's decision on the Plaintiff's Motion to Dismiss. Docket No. 27. Alternatively, the motion
 7 seeks clarification of the Court's Order Denying the second Proposed Discovery Plan and
 8 Scheduling Order. *Id.*

9 DISCUSSION

10 I. Motion to Stay

11 The Defendants, Counterclaimants, and Third-Party Plaintiff (collectively, "Atwood
 12 Parties") are seeking to stay discovery pending the Court's ruling on the Plaintiff's Motion to
 13 Dismiss, Docket No. 16, filed on February 11, 2013. This is the same request the parties made in
 14 the Second Proposed Discovery Plan. *See* Docket No. 19.

15 As the Court explained before, the pendency of a motion to dismiss alone does not in
 16 itself stay discovery deadlines. *See, e.g., Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*,
 17 __ F.R.D. ___, 2013 WL 150185, *2 (D. Nev. Jan. 14, 2013) ("The Federal Rules of Civil
 18 Procedure do not provide for automatic or blanket stays of discovery when a potentially
 19 dispositive motion is pending"). *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D 597, 600 (D. Nev.
 20 2011) (same). "It is well-established that a party seeking a stay of discovery carries the heavy
 21 burden of making a strong showing why discovery should be stayed." *Tradebay*, 278 F.R.D. at
 22 601. "A showing that discovery may involve some inconvenience and expense does not establish
 23 good cause for issuance of a stay." *Id.* Conclusory statements regarding the benefit of a stay are
 24 plainly insufficient. *Id.* at 601-02. In order to meet this requirement, the movant must, as a
 25 threshold matter, establish that the "pending motion must be potentially dispositive of the entire
 26 case or at least dispositive of the issue on which discovery is sought." *Id.*

27 The Atwood Parties do not meet the threshold showing that the pending motion to
 28 dismiss renders a stay of all discovery appropriate. Judge Mahan has already denied Defendant's

1 motion to dismiss. Docket No. 12. The pending motion to dismiss targets only the third party
 2 complaint and counterclaim. Docket No. 16. As such, the pending motion is not potentially
 3 dispositive of the entire case and it provides no justification for staying all discovery in this case.
 4 Instead, the request is supported only by statements that beginning discovery will be inconvenient
 5 and expensive. See Docket No. 27 at 6. It does not address why discovery on the Plaintiff's
 6 claims cannot commence until the Court decides whether the Atwood Parties' claims should be
 7 dismissed. *Id.* Accordingly, the Court DENIES Defendants' request to stay all discovery until the
 8 pending motion to dismiss is resolved.

9 II. Motion to Extend

10 The Atwood Parties have requested an extension of discovery deadlines in the event that
 11 the Court denies the Plaintiff's Motion to Dismiss. This request is premature. The Court cannot
 12 determine whether a discovery extension due to a decision on the Motion to Dismiss is
 13 appropriate at this time, because no such decision has been made. Accordingly, this request is
 14 denied.

15 As indicated above, the Plaintiff has claims which the Court has already determined will
 16 not be dismissed. The parties should conduct discovery on those claims pursuant to the current
 17 discovery schedule. *See* Docket No. 23. In the event that the Atwood Parties' claims survive the
 18 Plaintiff's Motion to Dismiss and additional discovery is still necessary, they may request an
 19 extension of discovery pursuant to LR 26-4.

20 III. Motion for Clarification

21 The Atwood Parties take issue with the February 26, 2013, Court Order in that it
 22 interpreted their request to postpone discovery until the Court decides the Plaintiff's Motion to
 23 Dismiss as a motion to stay discovery.

24 "The Court mischaracterized the Second Proposed Discovery Plan. It was not a Motion
 25 to Stay all discovery. Instead, the Second Proposed Discovery Plan represented a
 26 stipulation between the parties in which they agreed to the discovery deadlines, taking
 27 into account Plaintiff's pending Motion to Dismiss. **The parties** agreed that duplicating
 28 discovery efforts did not make sense and **decided to wait for the Court to rule upon**
Plaintiff's Motion to Dismiss before engaging in discovery."

Motion to Stay, Docket No. 27 at 9 (emphasis added).

1 Although the Second Proposed Discovery Plan was not labeled as a motion to stay nor
 2 did it sufficiently brief the issue of a stay, it was indeed requesting a stay of discovery. A stay is
 3 defined as “[t]he postponement or halting of a proceeding, judgment, or the like.” STAY, *Black’s*
 4 *Law Dictionary* (9th ed. 2009), stay. The Second Proposed Discovery Plan requested an order to
 5 postpone discovery pending a Court decision. Thus, it was requesting a stay of discovery and the
 6 Court wrote its decision accordingly.

7 Finally, contrary to the parties’ understanding, the Court is aware that the parties
 8 stipulated amongst themselves to not conduct discovery. However, under the Local Rules, such a
 9 stipulation must be approved by the Court. LR 7-1(b).

10 No stipulations relating to proceedings before the Court except those set forth in Fed. R.
 11 Civ. P. 29 shall be effective until approved by the Court. Any stipulation that would
 12 interfere with any time set for completion of discovery, for hearing of a motion, or for
 13 trial, may be made only with the approval of the Court.

14 LR 7-1(b).

15 No such approval was requested nor granted in this case. Thus, the parties’ stipulation
 16 was in violation of the Local Rules. Further, as explained in the February 26, 2013, Court Order,
 17 the parties provided an insufficient explanation for why they disregarded the Local Rules and
 18 chose not to conduct discovery in a timely manner. *See* Docket No. 19. Accordingly, the
 19 February 26, 2013, Court Order, like this Order, denied the parties’ request for a stay of
 20 discovery.

21 CONCLUSION

22 Based on the foregoing, and good cause appearing therefore,

23 **IT IS HEREBY ORDERED** that Defendants/Counterclaimants/Third-Party Plaintiff’s
 24 Motion to Stay Discovery Pending a Ruling on Plaintiff’s Motion to Dismiss and to Extend
 25 Discovery Deadlines or in the Alternative Motion for Clarification (#27) is **DENIED**.

26 DATED this 28th day of March, 2013

27 
 28 NANCY J. KOPPE
 United States Magistrate Judge